

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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**REVISION NOTE #1:**

Document #9107, effective 3-23-08, readopted with amendments and renumbered former Part Env-Ws 363 titled “Capacity Assurance for Existing Public Water Systems” under a new subtitle as Part Env-Dw 601 titled “Capacity Assurance for Public Water Systems”. Document #9108, effective 3-23-08, readopted with amendments and renumbered former Part Env-Ws 371 entitled “Capacity Assurance for Proposed Public Water Systems” under a new subtitle as Part Env-Dw 602. The redesignation from subtitle Env-Ws to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05. The new Chapter Env-Dw 600 was titled “Capacity Assurance.”

Documents #9107 and #9108 replaced all prior filings for rules on capacity assurance formerly in, respectively, Env-Ws 363 and Env-Ws 371. The prior filings for rules on capacity assurance in former Env-Ws 363 and Env-Ws 371 include the following documents:

- Env-Ws 363: #7105, eff 9-23-99, EXPIRED 9-23-07; #8994, INTERIM, eff 9-25-07
- Env-Ws 371: #7105, eff 9-23-99, EXPIRED 9-23-07; #8995, INTERIM, eff 9-25-07

**REVISION NOTE #2:**

Document #11143, effective 7-26-16, readopted with amendments Chapter Env-Dw 600 and renumbered various rules in the former Env-Dw 600. The new rule numbers in Document #11143 compared to the former rule numbers are shown in the cross-reference table that is posted with these rules.

Document #11143 replaces all prior filings for rules in the former Chapter Env-Dw 600. The rules in the former Chapter Env-Dw 600 which had last been filed under Document #9107 and Document #9108 did not expire on 3-23-16 since they were extended pursuant to RSA 541-A:14-a until replaced by the rules in Document #11143, effective 7-26-16.

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CHAPTER Env-Dw 600 CAPACITY ASSURANCE

Statutory Authority: RSA 485:2, V

Env-Dw 601.01 Purpose. The purpose of the rules in this chapter is to ensure the long-term viability of public water systems (PWS) as required by §119 of the federal Safe Drinking Water Act Amendments of 1996, 42 U.S.C. §300g-9 (federal SDWA), by ensuring that each existing and proposed community PWS (CWS) and non-transient, non-community PWS (NTNC) has sufficient technical, managerial, and financial capability to:

- (a) Meet the requirements of the New Hampshire Safe Drinking Water Act, RSA 485 (state SDWA); and
- (b) Provide effective and reliable water service to its customers.

Source. (See Revision Notes #1 and #2 on 1<sup>st</sup> page) #11143, eff 7-26-16

Env-Dw 601.02 Incorporated Definitions. Unless otherwise specified, any term used in this part that is defined in Env-Dw 103 shall have the meaning specified therein.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 601.03 Chapter-Specific Definitions.

(a) “Business plan” means a multifaceted assessment of the present and future managerial and financial capacity of a PWS to achieve and maintain economic viability, compliance with the state SDWA and federal SDWA, and effective and reliable service to customers.

(b) “Supplier of water” means:

- (1) In the context of a proposed PWS, the person who will be the supplier of water if all necessary approvals for the proposed PWS are obtained; and
- (2) In the context of an existing PWS, “supplier of water” as defined in RSA 485:1-a, XVI.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

PART Env-Dw 602 CAPACITY ASSURANCE FOR PROPOSED CWS AND NTNC

Env-Dw 602.01 Applicability. The rules in this part shall apply to:

- (a) Any proposed CWS or NTNC other than a CWS or NTNC proposed by a political subdivision;
- (b) Any existing water system that is not owned by a political subdivision and does not meet the definition of a CWS or NTNC but plans to be modified so as to become a CWS or NTNC.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 602.02 Demonstrating Capacity Assurance for New CWS or NTNC. Capacity assurance for a new CWS or NTNC as required by Env-Dw 405 or Env-Dw 406, as applicable, shall be demonstrated by the supplier of water through the following submittals:

- (a) A business plan as specified in Env-Dw 602.03, which includes a demonstration of technical, managerial, and financial capacity; and

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(b) A technical design assurance submittal as specified in Env-Dw 405.03 or Env-Dw 406.03, as applicable.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 602.03 Business Plan for a Proposed CWS or NTNC.

(a) The business plan for a proposed CWS or NTNC shall include:

- (1) A summary description of the proposed CWS or NTNC and its customers;
- (2) A description of the technical capacity of the supplier of water, as specified in Env-Dw 602.04;
- (3) A description of the managerial capacity of the supplier of water, as specified in Env-Dw 602.05; and
- (4) A description of the financial capacity of the supplier of water, as specified in Env-Dw 602.06.

(b) The supplier of water shall review the business plan annually and update the plan as needed.

(c) The supplier of water shall submit a preliminary business plan to the department at the same time the supplier of water submits the final design for the PWS pursuant to Env-Dw 402 or Env-Dw 404 through Env-Dw 406, as applicable.

(d) The department shall review the preliminary business plan within 30 days and provide written comments to the supplier of water.

(e) The comments provided pursuant to (d), above, shall identify all areas in which the business plan is deficient and the deadline for submitting a final business plan with all deficiencies corrected, established in consultation with the supplier of water based on the type of the deficiencies needing to be corrected.

(f) If the department does not receive the final business plan by the established deadline and the supplier of water has not requested an extension, the department shall deem the business plan to have been withdrawn.

(g) The department shall approve the final business plan if the department determines that by implementing the plan, the PWS will achieve the purpose of these rules as stated in Env-Dw 601.01.

(h) The department shall notify the supplier of water of the plan's approval or disapproval in writing. If the plan is not approved, the written notice shall specify the reason(s) therefor.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 602.04 Description of Technical Capacity. The description of the supplier of water's technical capacity required by Env-Dw 602.03(a)(2) shall include:

(a) A general technical design description including all major water system components, including sources, treatment, storage, piping, number of service connections, estimated population to be served, and average and maximum daily domestic and exterior water uses;

(b) An asset inventory, ranked based on each component's impact on system operations and a priority ranking for replacement; and

(c) A schedule of the useful life of all water system components, average life expectancies and current retail replacement costs, based on Table 602-1, below, unless the supplier of water provides an alternative schedule and justification:

Table 602-1: Anticipated Life Expectancies

<b>Component</b>	<b>Anticipated Life Expectancy</b>
Control building/Pump house	40 years
Aboveground Storage tanks	50 years
Underground storage tanks	30 years
Pumping and control equipment	10 years
Distribution system	50 years
Wells	25 years
Water treatment equipment	10 years

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 602.05 Description of Managerial Capacity. The description of the supplier of water’s managerial capacity required by Env-Dw 602.03(a)(3) shall include:

- (a) Identification of the type of ownership of the proposed CWS or NTNC, including:
  - (1) The full legal name and business identification number as on file with the New Hampshire secretary of state; and
  - (2) A copy of the organizational rules of its management and rules governing the election of officers;
- (b) An organizational schematic of the management of the CWS or NTNC, including:
  - (1) Responsible managerial officials, including the owner or system representative, board members, and the individual(s) in charge of:
    - a. Billing and debt collection, issuing consumer confidence reports and SDWA public notices, and similar customer interactions;
    - b. Water balance accounting; and
    - c. Financial recordkeeping;
  - (2) The certified primary operator responsible for achieving effective and reliable routine system operations, maintenance, meter reading, compliance sampling requirements, and other requirements established in Env-Dw 502; and
  - (3) All subcontracted services;
- (c) For a proposed CWS, documentation that the proposed CWS holds or will hold a deed covenant for each property intended to be served by the CWS, that:
  - (1) Establishes associated allowances and the use restrictions related to the CWS, including:
    - a. A clear statement that the customer is liable for payment for water service and will be charged in accordance with the water conservation plan requirements established in Env-Wq 2101; and
    - b. A clear statement of any exterior or other water use restrictions contained in the department’s source approval under Env-Dw 300 or the water conservation plan approval under Env-Wq 2101, or otherwise required by the department’s approval of the CWS; and
  - (2) Has been reviewed by an attorney licensed in New Hampshire, who has certified that the deed covenant is legal and enforceable in the State of New Hampshire; and

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- (d) Written water system rules as required by Env-Dw 503.08.

Source. (See Revision Notes #1 and #2 on pg. i) #11143,  
eff 7-26-16

Env-Dw 602.06 Description of Financial Capacity. The description of the financial capabilities of the supplier of water required by Env-Dw 602.03(a)(4) shall include:

(a) Final construction costs for all water system infrastructure and water source development, excluding costs attributable to land acquisition;

(b) A projection of the annual expenses of operating the PWS over a minimum 5-year planning horizon, using generally accepted accounting principles, including:

(1) The fee required by RSA 485:41, VIII for a permit to operate and other applicable state and federal taxes and fees;

(2) Depreciation;

(3) Annual debt repayment, including principal and interest or rate of return where applicable;

(4) Annual funding of an operation and maintenance account for general repair or replacement of existing facilities and for any new phases of development; and

(5) A list of water system operation and maintenance expenses including:

a. Electrical power;

b. Heating;

c. Water treatment chemicals;

d. Disposal costs for water treatment residuals;

e. Certified operator and other contracted staff;

f. Compliance and other water quality testing;

g. Meter calibration;

h. Leak detection surveys and repairs, and

i. Other operational costs; and

(c) Projected water rates, the rate structure, and the fee schedule for the entire 5-year planning period, including:

(1) Type of rate structure, for example, increasing block rate to encourage water conservation and, for a CWS, not less than quarterly billing frequency per Env-Wq 2101;

(2) Water use charges;

(3) Disconnect and activation charges;

(4) Hydrant and fire sprinkler charges;

(5) Late fees;

(6) Backflow prevention device permits and testing charges;

(7) Water service line insurance; and

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(8) Other charges including interest, equipment rental fees, and inspection fees.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 602.07 Initial and Continuing Disclosure for CWS.

(a) The supplier of water shall provide the business plan and projected rates and fees notice required by Env-Dw 602.06(c) to initial purchasers of the real estate intended to be served by the CWS.

(b) The supplier of water of a CWS shall provide notice in the annual consumer confidence report described in Env-Dw 811, or in an equivalent document, to all persons who own service connections to the CWS of:

- (1) The availability of the business plan; and
- (2) A schedule of prevailing water rates and other charges and fees.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

PART Env-Dw 603 CAPACITY ASSURANCE FOR EXISTING CWS AND NTNC

Env-Dw 603.01 Applicability. The rules in this part shall apply to any CWS or NTNC, other than one owned by a political subdivision, that:

(a) Receives a notice under Env-Dw 603.02(a) that it has exceeded the deficiency rating as specified in Env-Dw 603.02(b); or

(b) Receives an order from the department under RSA 485:4 or RSA 485:58 to comply with these rules.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 603.02 Notice of Deficiencies; Rating Determination.

(a) If the department identifies capacity assurance deficiencies at a CWS or a NTNC as a result of a sanitary survey, public complaint, repeated enforcement notices, or in any other way, the department shall notify the supplier of water of the capacity assurance deficiencies in writing.

(b) If the deficiency rating exceeds a total of 25 points as determined using Table 603-1, below, the supplier of water shall prepare a business plan and have the plan approved by the department pursuant to Env-Dw 603.03.

(c) The capacity assurance deficiency rating of the PWS shall be determined using the deficiency schedule shown below in Table 603-1:

Table 603-1: Deficiency Schedule for Capacity Assurance

<b>Area, Deficiency</b>	<b>Deficiency Points</b>
Inadequate source water capacity	15
Inadequate infrastructure (flooding, electrical, mechanical equipment), per deficiency	10
Significant deficiencies, per deficiency	10
Maximum Contaminant Levels, per violation	10
Lack of certified operator	10
Monitoring and reporting or Public Notice, per violation	10

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

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Env-Dw 603.03 Business Plan. The business plan shall meet the requirements of Env-Dw 602.03, with the following modifications:

(a) The technical capacity asset inventory required per Env-Dw 602.04(b) shall include an assessment of the equipment’s current condition, a ranking of the component’s impact on system operations, and priority ranking for replacement;

(b) The managerial capacity required per Env-Dw 602.05 shall include a water balance for the prior calendar year which compares the system input volume to the sum of metered billed usage and metered unbilled usage to establish losses; and

(c) The financial capacity required per Env-Dw 602.06(b) shall include past year actual, current, and projected year expenses.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 603.04 Submittal and Approval of Business Plan.

(a) The supplier of water shall submit a business plan meeting the requirements of Env-Dw 603.03 to the department in writing:

(1) Within 90 days of receiving a notice of deficiencies pursuant to Env-Dw 603.02; or

(2) As specified in an administrative order issued pursuant to RSA 485:4 or RSA 485:58.

(b) The department shall review and comment on the plan as specified in Env-Dw 602.03(d) and (e).

(c) The department shall approve the plan if it demonstrates that implementing the plan will:

(1) Correct the deficiencies so as to bring the PWS into compliance with the state SDWA; and

(2) Allow the PWS to provide effective and reliable water service to its customers.

(d) The department shall notify the supplier of water in writing within 30 days of receiving the final plan of the plan’s approval or disapproval. If the plan is not approved, the written notice shall specify the reason(s) therefor.

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

Env-Dw 603.05 Notice to The Public. The supplier of water shall provide annual notice as required by Env-Dw 602.07(b).

Source. (See Revision Notes #1 and #2 on pg. i) #11143, eff 7-26-16

**APPENDIX A: STATE AND FEDERAL STATUTE(S) IMPLEMENTED**

<b>Rule Section(s)</b>	<b>State and Federal Statute(s) Implemented</b>
Env-Dw 600	RSA 485:3, XII, 42 U.S.C. §300g-9